



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

## DOCUMENT FOR PUBLIC RELEASE

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**Matter of:** Davies Rail and Mechanical Works, Inc.

**File:** B-278260.2

**Date:** February 25, 1998

Sam Zalman Gdanski, Esq., and Jeffrey Gdanski, Esq., for the protester.  
George N. Brezna, Esq., Lis B. Young, Esq., and Kenneth M. Homick, Esq.,  
Department of the Navy, for the agency.  
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

## DIGEST

Protest that agency improperly evaluated technical proposals is denied where the record shows that the evaluation was reasonable and consistent with the stated evaluation factors; protester's mere disagreement with the agency's conclusion does not render the evaluation unreasonable.

## DECISION

Davies Rail and Mechanical Works, Inc. protests the award of a contract to Ederer, Inc. under request for proposals (RFP) No. N62472-97-R-1641, issued by the Department of the Navy, Navy Crane Center (NCC) for certain overhead electric traveling (OET) cranes. Davies contends that the proposals were not evaluated properly and that in making its best value determination, the agency failed to take into account all of the appropriate considerations.

We deny the protest.

The solicitation, issued May 22, 1997, contemplated the award of a fixed-price contract to design, fabricate, assemble, test, deliver, and install one 100-ton main hoist with a 50-ton auxiliary hoist OET crane, with an option for a 50-ton main hoist with a 10-ton auxiliary hoist OET crane. Both cranes are to be installed at Norfolk Naval Shipyard, Norfolk, Virginia.

Section M-1 of the RFP provided for award to the offeror whose proposal was determined to represent the best value to the government, price and other factors

considered. Section M-4 identified technical evaluation factors and subfactors as follows:

1. **TECHNICAL APPROACH** composed of the following five elements:

- a. Describe your technical approach for meeting the required maximum wheel loads and minimum wheel spacings set forth in the specification.
- b. Describe the general procedures your company uses in designing cranes. Provide the names and experience resumes of the structural, mechanical and electrical engineers, who will be involved in the design of these cranes. . . . How does your company ensure that your designs are fully coordinated among the disciplines. Provide the name, registration and background experience for each professional engineer responsible for the design of the cranes called for by the solicitation.
- c. Provide a description of your plant (capacity, location, etc.) and the special facilities (paint facilities, calibration equipment, cutting tables, cranes, etc.) available.
- d. Describe how the crane will be erected/installed.
- e. Describe your quality assurance system.

2. **MANAGEMENT PLAN** composed of the following elements:

- a. Describe your proposed schedule and milestones for completing this work within the timeframes set forth in this solicitation. Include in your description the scheduling method you plan to use to manage this project and a sample of a schedule used on a project of similar magnitude and complexity completed within the last three (3) years.
- b. Provide resumes for the Project Manager, Lead Design Engineer, Quality Control Manager, Plant Superintendent and Field Superintendent, who will be assigned to this project.

3. **CORPORATE EXPERIENCE**

List at least five (5) previous projects that were worked on within the past five (5) years that demonstrate your ability to design, manufacture, install and test cranes of a similar capacity and complexity as this project. Provide phone numbers

and points of contact for each project. If subcontractors will be used, provide similar past experience data for the subcontractor. In addition, describe the projects on which you have worked together in the past.

Section M-4 advised that technical factors and price would be weighted equally and that the three technical factors and the subfactors of each factor would also be weighted equally with respect to each other. For award purposes, section M-1 provided that price would be evaluated by adding the total price for the option to the total price for the base requirement, but that evaluation of the option would not obligate the government to exercise the option.

Eight proposals, including those of Davies and Ederer, were received by the June 24 closing date. The proposals were evaluated by a source selection board (SSB), comprised of a technical evaluation board (TEB), which reviewed the technical proposals, and a price evaluation board, which evaluated the price information. The technical ratings for the proposals at issue were as follows:

	Technical Approach	Management Plan	Corporate Experience
Davies	Acceptable	Acceptable	Acceptable
Ederer	Outstanding	Acceptable	Acceptable

Both the Davies and Ederer proposals were rated "acceptable" overall, with the Ederer proposal ranked "first" because of its "outstanding" rating under technical approach. Specifically, the TEB noted that Ederer had provided extensive information beyond what the solicitation required explaining how it proposed to meet the wheel load specifications for both cranes. Also, the TEB noted that Ederer's in-house design staff was well qualified, Ederer had sufficient plant capacity to perform all of the work in-house, it had provided detailed information on crane erection/installation procedures, and its quality assurance plan met the requirements of the solicitation.

The TEB indicated that Davies's proposal provided sufficient information concerning how it proposed to meet the crane wheel loads and the offeror's in-house design staff and its proposed subcontractors were qualified. The TEB noted that Davies did not have the plant capacity to manufacture either crane in-house and it proposed to subcontract the majority of the work. While the TEB concluded that the multiple subcontracting proposed by Davies was a concern and presented a risk because the number of subcontractors would increase the amount of coordination required and increase the difficulty of resolving any post-acceptance problems, Davies's proposal was evaluated as technically acceptable.

Based on the technical and price evaluations, three proposals, including those of Davies and Ederer, were determined to be in the competitive range. Written discussions, focused on price concerns, were conducted with these three offerors. No technical questions were raised in discussions because the proposals were evaluated as fully acceptable and the proposed approaches of the offerors showed that they understood the difficulties in meeting the specifications and had provided alternatives to overcome the anticipated design problems. In addition, exact weights could not be resolved until after the awardee submitted a crane design to the agency for approval. Best and final offers (BAFO) were requested and received from Davies and Ederer on September 15.<sup>1</sup> Both offerors reduced their prices in their BAFOs and the technical evaluations remained unchanged.<sup>2</sup>

The SSB recommended that award be made to Ederer because both proposals were evaluated as technically acceptable and Ederer offered the lower price.<sup>3</sup> The source selection authority agreed with the recommendation and award for the 100-ton crane was made to Ederer on September 23 in the amount of \$1,759,794.<sup>4</sup> Upon learning of the award, Davies filed an agency-level protest. Davies received a debriefing from the NCC on October 2 and filed this protest with our Office the following day.

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<sup>1</sup>The other firm included in the competitive range withdrew its offer during discussions.

<sup>2</sup>Davies also submitted an alternate proposal which offered a 3.6-percent price discount if the NCC awarded the base requirement and the option at the same time. Because NCC did not have sufficient funds at the time of contract award to award both the base and the option and because Ederer had not been given an opportunity to provide an offer based on the simultaneous award of both the base and option, the agency did not consider Davies's alternate offer.

<sup>3</sup>Ederer's total price for the base and option requirements was \$3,110,624 (\$1,759,794 for the base requirement and \$1,350,830 for the option). Davies's BAFO contained a total price entry of \$3,112,232, which is the price NCC used in its evaluation. In fact, Davies's base price is \$1,713,215 and its option price is \$1,437,240 thus its actual total price is \$3,150,455.

<sup>4</sup>The option for the 50-ton crane was not included in the initial award because the agency needed approximately \$250,000 in additional funds, and NCC had been advised on September 18 that it could lose over \$1 million that had been set aside for the 50-ton crane. Additional funding subsequently became available, whereupon NCC awarded the option to Ederer.

Davies first challenges the agency's technical evaluation of both proposals, alleging, among other things, that Ederer's proposed 100-ton crane does not conform to the RFP requirements concerning wheel loads and that the NCC improperly applied an unstated evaluation criterion in its evaluation of the protester's proposal.

The evaluation of technical proposals is a matter within the contracting agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241 at 5. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but will examine the record of the evaluation to ensure that it was reasonable and in accordance with stated evaluation criteria, and not in violation of procurement laws and regulations. Id. The protester bears the burden of proving that an evaluation is unreasonable; mere disagreement with the agency does not render the evaluation unreasonable. Ogden Support Servs., Inc., B-270354.2, Oct. 29, 1996, 97-1 CPD ¶ 135 at 3. Here, as discussed below, the record provides no basis to call into question the propriety of the agency's evaluation.

## WHEEL LOADS

The RFP required each offeror to describe its technical approach to meeting the maximum permitted wheel load and minimum wheel spacing specified in the solicitation.<sup>5</sup> In response to a question concerning required wheel loads, the NCC, in amendment No. 0001, stated that it wanted "a general idea" of how each offeror intended to meet the allowable wheel load and spacing requirements. The agency explains that it knew that the wheel load requirement would be difficult to meet for the crane as specified, and it believed that if the calculated wheel loads submitted in the proposals were too high, there were different approaches that could be taken to reduce the wheel loads. It was for this reason that amendment No. 0001 specified that the agency sought only a "general idea" of how an offeror intended to meet the wheel load requirement, which would enable the agency to determine if the offeror understood the wheel load problems and could adapt its design to meet the requirements.

Ederer provided initial calculations in its proposal which show a wheel load of [DELETED] pounds, versus the 78,350 pound permitted maximum. Ederer indicated that it could not state at the time it prepared its proposal that it had a solution for the 100/50-ton crane wheel loading requirement, but Ederer listed a number of possible solutions to meet the required wheel load, including [DELETED], and stated that "if [NCC] work[s] with us, we can find a solution." As noted above, the

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<sup>5</sup>"Wheel load" is the overall weight that the crane applies on the crane rail system in the building through the bridge wheels. Several variables, such as crane weight and lifted load weight, may be combined and modified to determine the wheel load of a crane. The maximum wheel load permitted in the solicitation is 78,350 pounds.

agency evaluated Ederer's proposed approach as clearly indicating an understanding of the problem and, based on the response, including the calculations Ederer submitted, as going beyond what was required by the RFP.

Davies argues that Ederer's proposal does not conform to the solicitation wheel load requirement. The protester contends that the RFP clearly states the wheel load requirement and does not, as the agency contends, "merely [require] the offeror to state his understanding of wheel loads, and possible solutions to the problems." The protester argues that the agency's request for a "general idea" simply means that, while offerors need not provide in their proposals the exact calculations of how the proposal would meet the maximum wheel loads, offerors were still required to show compliance with the maximum loads. Because Ederer's proposal did not state that it would conform to the solicitation, the protester argues that Ederer's proposal should have been found technically unacceptable.

A solicitation must be read as a whole and in a reasonable manner, giving effect to all its provisions. Kerry Lindahl, B-276057, May 7, 1997, 97-1 CPD ¶ 165 at 6. Here, the RFP specified a wheel load but required only a description of the offeror's approach for meeting that requirement, and amendment No. 0001 clarified that all that was required was a "general idea" of what the offeror would do to meet the specified wheel load. The overall effect of these provisions is that an offeror was only required to explain its approach to meeting the specified wheel load in the form of a general, preliminary plan, which would be adjusted as necessary once a crane design was finalized. Davies's position that Ederer's proposal cannot be accepted because it fails to evidence precise satisfaction of a solicitation requirement reflects an unreasonably narrow reading of the RFP specifications. In this regard, while Ederer's proposal recognizes that its proposed design does not conform, as permitted by the solicitation, Ederer explains how it plans to adjust its design to meet the specific requirement.

As NCC points out in its report, wheel load cannot be calculated until the final weight of the crane is known. The weight will not be known until a design is submitted by the contractor and approved by the agency. In this regard, the solicitation stated that the crane design would be submitted for government review and that the offeror's personnel would meet with government engineers to resolve any noncompliance with the crane specifications. It is essentially for this reason that the agency did not believe that it would be productive to conduct discussions with any offeror regarding precisely how it would satisfy the wheel load requirement. That is, once the agency was satisfied that the offeror's approach showed sufficient understanding of what was required to achieve the wheel load requirement, no useful purpose would be served in discussing details until after the agency review session was conducted with the awardee. In sum, the agency reasonably evaluated Ederer's proposal as technically acceptable with respect to the proposed approach to meeting the specified wheel load.

Moreover, while Davies asserts that its proposal demonstrated compliance with the wheel load specifications, in fact, there are inconsistencies in Davies's proposal and it provides no basis to conclude that Davies was offering a compliant design. At section 1.A.1 of its proposal, Davies makes the blanket statement that the maximum wheel load of its 100-ton crane will be 78,350 pounds. However, Davies does not provide wheel load calculations to verify compliance; instead, the proposal at section 1.A.1 states that the "maximum allowed wheel load is approached if the trolley dead load is 65,000 lbs. And the bridge dead load is 130,000 lbs. Our preliminary estimate dead loads are very close to these upper bound dead loads."

Additionally, at section 1.B of its proposal, Davies included a document titled "Travel Drive Analysis" in a plastic pocket envelope with scaled drawings of its proposed crane, which included weights for the trolley dead load and the bridge dead load. While the agency states that it used the information provided by Davies at section 1.A.1 in evaluating the proposals,<sup>6</sup> in response to the protest, the agency used the weights provided in the Travel Drive Analysis document to calculate the protester's proposed wheel loads. Based on the weights provided in the Travel Drive Analysis document, the protester's proposed wheel loads were also higher than the maximum permitted 78,350 pounds. The agency asserts that the weights given in the Travel Drive Analysis document provide an appropriate basis to calculate the wheel loads because that document was packaged with Davies's preliminary drawing for the 100-ton crane and the two appeared to go "hand in hand."

Our Office conducted a telephonic hearing at which witnesses for the protester and the agency testified concerning the agency's evaluation of proposals with respect to the wheel load requirement. The protester conceded during the hearing that it could not tell whether the Travel Drive Analysis document was, in fact, included with its proposal. The protester argues that even if the document was included in the proposal, the agency should have known from its "7-26-1996" date that the document and the figures on it were related to a previous solicitation and not relevant here. Additionally, the protester argues that the Travel Drive Analysis document is incomplete, containing only inputs and that the agency should have recognized that the document was incomplete and did not provide a basis for calculating the proposed wheel load.

We disagree that the date notation alone establishes that the Travel Drive Analysis document was not related to this proposal, especially where, as here, the agency reports that the document was contained in the plastic pocket with Davies's scaled drawing of its proposed 100-ton crane. As to the protester's suggestion that the agency should have recognized that the document was incomplete and discussed

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<sup>6</sup>The Navy did not perform any precise wheel load calculations in evaluating the proposals.

this with the protester, as noted above, the agency used the document to calculate wheel loads based on the figures in this document only after the protest was filed. During evaluation, the proposal was considered acceptable on the basis that the approach proposed was compliant. Thus, there was no reason to seek clarification in this regard during discussions.

Where a proposal contains conflicting provisions which call that offer of compliance into question, the offer is ambiguous. TRS Research, B-274845, Jan. 7, 1997, 97-1 CPD ¶ 6 at 3. Here, the protester submitted two possible sets of proposed figures. One set, provided at section 1.A.1 of the protester's proposal apparently meets the requirement. The second set of figures does not meet the wheel load requirement. Thus, Davies's proposal did not provide the exact equipment weights and calculations to demonstrate compliance. Because the agency was seeking only a satisfactory approach to achieving the specified wheel loads, rather than a fully compliant design, it reasonably evaluated both proposals as satisfactory with respect to the load requirement, consistent with the amended RFP. Davies could not have been prejudiced by this approach because, under its interpretation of the RFP requirements, neither proposal could have been evaluated as technically acceptable.

Davies makes numerous other allegations of unreasonable assessments of specific aspects of Ederer's proposal, including, for example, that the agency unreasonably evaluated Ederer's proposal as to design procedures, plant description, crane installation, subcontractors, and personnel. The protester also alleges that the award to Ederer does not represent the best value to the government. While we will not discuss all of Davies's allegations, we have reviewed them all and, as illustrated by the following examples, we find that the record supports the agency's technical evaluation of the proposals and its award determination.

As quoted above, the RFP evaluation criteria call for offerors to describe their general design procedures, their plant, how the crane will be erected/installed, and their subcontractors and personnel. Both Davies and Ederer received generally acceptable ratings on these factors, with the TEB noting that each proposal met the requirements for each subfactor. Davies argues that Ederer's proposal was too highly rated on each of these subfactors. For example, Davies argues that it provided more specific design procedures than Ederer and, therefore, the two proposals should not have received identical ratings.

The record shows that Ederer provided a 13-step description of its work flow and organization, which specified, among other things, specification review, preliminary and final design, establishment of a job/project schedule, identification/assignment of personnel, manufacturing, inspection, testing, and installation. Davies provided a two-page description of its procedures and a design process flow chart, including such topics as gathering information, analysis, preliminary design, test preliminary design, and detail design (manufacturability, availability, materials/components and



reliability). The agency acknowledges that Davies's procedures may be more detailed, but points out that the RFP sought only a description of general procedures. Thus, the agency argues, and we agree, that Ederer provided a suitable response, with sufficient information for the agency to find the proposal acceptable. Davies's disagreement with this evaluation does not make it unreasonable.

Similarly, Davies argues that Ederer's description of its plant was insufficient. The record shows that Ederer, while providing little general information about its plant, did indicate its production and plant capabilities by listing previous work. For example, Ederer indicated that it had produced cranes up to [DELETED]-ton capacity, a [DELETED]-foot span and a [DELETED]-foot lift. Based on this information, the agency reasonably concluded that Ederer's plant was acceptable.

As to crane erection/installation, Davies contends that Ederer's plan for the 100-ton crane is not feasible because it proposes to use two [DELETED] cranes to lift girders and other equipment and parts. Davies believes these cranes are too big for the available space. In this regard, the agency notes that, while the floor plan may appear too congested for cranes of this size, any erection problems are typically resolved during pre-installation meetings when the contractor can arrange to temporarily relocate interfering equipment. In any event, Davies also proposed to use two large cranes ([DELETED]) for crane installation. While the protester offers a different approach and maintains that Ederer's cranes are too large, the protester's judgment regarding the feasibility of Ederer's installation plans does not establish that the agency's assessment was unreasonable.

Davies also alleges that, while Ederer provided resumes for its personnel, it did not identify which employees would serve as project manager, lead design engineer, quality control manager, plant superintendent, and field superintendent, as required by the RFP. In fact, the RFP did not require letters of commitment or any other fixed designations for these positions. Rather, the evaluation language in question calls for the offeror to provide resumes for qualified individuals for these positions. Ederer provided nine resumes, indicating that all but one of its employees had 28 or more years experience. The resumes also identified Ederer's project manager, structural engineer, mechanical engineers, electrical engineers, quality assurance manager, and plant superintendent. The awardee did not specifically identify its field superintendent or its lead engineer. However, NCC did not regard this as a problem because the resumes submitted indicated that several of Ederer's [DELETED] engineers qualified as lead engineer and that the program manager was also qualified to perform the duties of field superintendent. Because the resumes establish that Ederer has sufficiently qualified individuals for these positions on its staff, the agency reasonably concluded that the required positions were covered. We see nothing improper with this evaluation.

Davies complains that Ederer failed to identify and provide past experience data for any subcontractors that it planned to use. Ederer plans to use two subcontractors,

[DELETED]. Although Ederer did not identify these subcontractors or provide past experience data, its proposal was rated acceptable in this regard. The agency explains that it did not believe that these subcontractors had to be addressed in the proposal because they are not involved in the major work required under the contract. Specifically, transportation and erection were of significantly less concern to the agency than design and fabrication. Further, the agency had specific knowledge that Ederer had successfully delivered cranes in the past, indicating to the agency that the awardee knew how to transport and erect them. Ederer had also submitted a detailed installation plan with its proposal. In sum, the agency reasonably concluded that Ederer had adequately demonstrated its subcontractor capability, notwithstanding that Ederer did not list its shipping and installation subcontractors.

#### UNSTATED EVALUATION CRITERION

Davies also argues that the solicitation did not limit the subcontracting permitted under the contract and that the NCC improperly evaluated Davies's proposal for any risk that could be associated with subcontracting. The protester argues that risk assessment is an unstated evaluation criterion, and that the agency should have raised this concern in discussions.

First, we note that, even when risk is not specifically listed in the solicitation as an evaluation criterion, an agency is not precluded from considering any proposal risk arising from an offeror's approach or demonstrated lack of understanding that is intrinsic to the stated evaluation factors. Ogden Support Servs., Inc., supra, at 7. Here, the NCC reasonably concluded that Davies's use of subcontractors to perform the majority of the work required under the RFP represented an approach which, because of the fragmentation of services, presented greater risk for the agency. In any event, Davies's acceptable rating under this factor did not have any effect on the award determination. That is, while Ederer's proposal received an outstanding assessment under this criterion, versus Davies's acceptable rating, the ratings for both proposals were otherwise equal and the two proposals were rated equally overall. Even if Davies's proposal had earned an outstanding rating on technical approach, the proposal would have remained technically equal but higher priced than the awardee's, and Ederer's proposal would remain the best value. Accordingly, Davies was not prejudiced by any possible shortcomings in this regard, and this objection provides no basis to sustain Davies's protest. Lithos Restoration, Ltd., 71 Comp. Gen. 367, 371 (1992), 92-1 CPD ¶ 379 at 5-6.

#### BEST VALUE DETERMINATION

Finally, Davies argues that the award to Ederer at Ederer's total price of \$3,110,624, does not represent the best value to the government. Specifically, the protester offered an alternate offer with a discounted price of \$3,000,192 for the award of both cranes simultaneously, and it offered an extended 18-month warranty on

structural and mechanical components.<sup>7</sup> Davies argues that the extended warranty has value to the government which was not taken into account in the best value determination.

The RFP did not provide for offers based on the simultaneous award of the base and the option requirements. Rather, the RFP stated that both base and option prices would be evaluated but that the evaluation of option prices would not obligate the government to exercise the option. The agency is required to make award based solely on the factors included in the solicitation. Department of State--Recon., B-243974.4, May 18, 1992, 92-1 CPD ¶ 447 at 5. Moreover, in addition to the fact that not all offerors were given the same opportunity to propose on this basis, at the time of award the agency did not have funds to make an award for the option. Accordingly, there was no basis to consider this purported discount. Similarly, Davies's extended warranty was not considered because it was not an evaluation factor and its consideration was not permitted for other offerors. Thus, contrary to Davies's assertion, its price was not lower than the awardee's price, and it was not denied evaluation credit for features for which it should have received credit. Because the proposals were reasonably evaluated as technically equal and Ederer proposed a lower price than the protester, there is no basis to question the award determination.

The protest is denied.

Comptroller General  
of the United States

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<sup>7</sup>The RFP required a 12-month warranty.